

management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.

(2) A list of any party which holds a five percent or more interest in the applicant, or any entity in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant (e.g., If Company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).

(3) A list of the names, addresses, citizenship and principal business of any person holding five percent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application.

(b) Each application for a broadband PCS license must:

(1) Submit the information required by the Commission's Rules, requests and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter;

(3) Show compliance with and make all special showings that may be applicable;

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications; and

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding.

However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of Subpart F and §§ 1.2105, 24.813 and 24.815 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee or licensee to enable it to determine whether a radio authorization should be granted, denied or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by § 1.1307 of the Commission's rules. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All broadband PCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a significant environmental impact prior to undertaking such construction and to otherwise comply with § 1.1301 et seq. of the Commission's Rules. See § 1.1312.

§ 24.814 [Reserved]

§ 24.815 Technical content of applications; maintenance of list of station locations.

(a) All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a broadband PCS license must also comply with all technical requirements of the rules governing the broadband PCS (see Subparts C and E of this Part as appropriate). The following paragraphs describe a number of general technical requirements.

(b) Each application (except applications for initial licenses filed on Form 175) for a license for broadband PCS must comply with the provisions of §§ 24.229-24.238 of the Commission's Rules.

(c)-(i) [Reserved]

(j) The location of the transmitting antenna shall be considered to be the station location. Broadband PCS licensees must maintain a current list of all station locations, which must describe the transmitting antenna site by its geographical coordinates and also by conventional

reference to street number, landmark, or the equivalent. All such coordinates shall be specified in terms of degrees, minutes, and seconds to the nearest second of latitude and longitude.

§ 24.816 Station Antenna Structures.

(a) Unless the broadband PCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the broadband PCS licensee has received prior approval from the FCC, no antenna structure that is located either at an airport or heliport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement, or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA and, except for military airports, it is clearly indicated that the airport will be available for public use, or at an airport or heliport that is operated by the armed forces of the United States, or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A broadband PCS station antenna structure no higher than 6.1 m (20 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting, are contained in Part 17 of the FCC Rules, Construction, Marking and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the Federal Aviation Administration (FAA) on FAA Form 7460-1 and the FCC on FCC Form 854.

§§ 24.817-24.818 [Reserved]

§ 24.819 Waiver of rules.

(a) Requests for waiver.

(1) A waiver of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) Denial of waiver, alternate showing required. If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 24.820 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements.

See also § 1.2105 of the Commission's Rules.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2)-(4) [Reserved]

(5) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(6) [Reserved]

(7) The application is filed prior to the Public Notice issued under § 24.705 of this part announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice.

(c) [Reserved]

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 24.821 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, its successor or assignee, or on behalf or for the benefit of the same applicant, its successor or assignee.

§ 24.822 Amendment of application to participate in auction for licenses in the Broadband Personal Communications Services filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications, defects which may not be cured. See also § 1.2105 of the Commission's Rules.

(b) In the broadband PCS, the only amendments to FCC Form 175 which will be permitted are minor amendments to correct minor errors or defects such as typographical errors. All other amendments to FCC Form 175, such as changes in the information supplied pursuant to § 24.813(a) or changes in the identification of parties to bidding consortia, will be considered to be major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of the Commission's Rules.

§ 24.823 Amendment of applications for licenses in the Broadband Personal Communications Services (other than applications filed on FCC Form 175).

(a) Amendments as of right. A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 24.829, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 24.829 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 24.827 if it proposes a substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, request for waiver or other written communication shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of the Commission's Rules.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly-filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) [Reserved]

(2) [Reserved]

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(4) [Reserved]

(5) The amendment corrects typographical transcription or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

§ 24.824 [Reserved]

§ 24.825 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 24.805 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, at least 10 days prior

to the expiration date of the existing temporary authorization. The Commission may accept a late-filed request upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 24.827(b) when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not to exceed 180 days may be granted under the standards of Section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 24.826 Receipt of application; Applications in the Broadband Personal Communications Services filed on FCC Form 175 and other applications in the Broadband Personal Communications Services.

(a) All applications for the initial provision of broadband PCS must be submitted on FCC Forms 175 and 175-S. Mutually exclusive initial applications in the broadband Personal Communications Services are subject to competitive bidding. FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under Part 22") must be submitted by

each winning bidder for each broadband PCS license for which application was made on FCC Form 175. In the event that mutual exclusivity does not exist between applicants for a broadband PCS license that have filed FCC Form 175, the sole applicant will be required to file FCC Form 401. The aforementioned Forms 175, 175-S, and 401 are subject to the provisions of 47 CFR Part 1, Subpart Q ("Competitive Bidding Proceedings") and Subpart H of this Part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 24.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's Rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules. (See § 24.813 for additional information concerning the filing of applications.)

§ 24.827 Public Notice Period.

(a) At regular intervals, the Commission will issue a public notice listing:

- (1) The acceptance for filing of all applications and major amendments thereto;
 - (2) Significant Commission actions concerning applications listed as acceptable for filing;
 - (3) Information which the Commission in its discretion believes of public significance.
- Such notices are intended solely for the purpose of informing the public and do not create any rights in an applicant or any other person.
- (4) Special environmental considerations as required by Part 1 of this chapter.

(b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing; provided, however, that the Commission will not grant an application filed on Form 401 filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 1.2108 of the Commission's Rules.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 24.823) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities (see § 24.203;

(4) For temporary authorization pursuant to § 24.825(b);

(5) [Reserved]

(6) For an authorization under any of the proviso clauses of Section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(7) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(8) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 24.828 Dismissal and return of applications.

(a) Except as provided under § 24.829, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175-S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications may be subject to penalties contained in § 1.2104 of the Commission's Rules. Requests for dismissal shall comply with the provisions of § 24.829 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of § 24.829 (whenever applicable) and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory

compliance with § 24.829 or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 24.829 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of the Commission's Rules (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which §§ 24.823(c) and 24.823(g) apply or which would cause the applicant to lose its status as a designated entity under § 24.709, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petition or other pleading.

(b) Policy. Parties to contested proceedings are encouraged to settle their disputes among themselves. Parties that, under a settlement agreement, apply to the Commission for ownership changes or for the amendment or dismissal of either pleadings or applications shall at the time of filing notify the Commission that such filing is the result of an agreement or understanding.

(c) The provisions of § 22.927 of the Commission's Rules will apply in the event of the filing of petitions to deny or other pleadings or informal objections filed against broadband PCS applications. The provisions of § 22.928 of the Commission's Rules will apply in the event of dismissal of broadband PCS applications. The provisions of § 22.929 of the Commission's Rules will apply in the event of threats to file petitions to deny or other pleadings or informal objections against broadband PCS applications.

§ 24.830 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with § 1.2108 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52 except where otherwise provided in § 1.2108;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a

party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously-filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying previously-filed application. This subsection does not apply, however, to petitioners who gain standing because of the major amendment.

§ 24.831 Mutually exclusive applications.

(a) The Commission will consider applications for broadband PCS licenses to be mutually exclusive if they relate to the same geographical boundaries (MTA or BTA) and are timely filed for the same frequency block.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of broadband PCS are subject to competitive bidding in accordance with the procedures in Subpart H and in Part 1, Subpart Q.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

(d)-(j) [Reserved]

§ 24.832 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience and necessity. See also § 1.2108 of the Commission's Rules.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing and is in accordance with the Commission's rules, regulations and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 24.831 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

- (4) There are no substantial and material questions of fact presented; and
- (5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 24.830, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely state the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission revises its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

- (1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;
- (2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and
- (3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if upon consideration of the application, any pleadings or objections filed or other matters which may be officially noticed, the Commission determines that:

- (1) A substantial and material question of fact is presented (see also § 1.2108);
- (2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete and in accordance with the Commission's rules, regulations and other requirements; or
- (3) The application is entitled to comparative consideration (under § 24.831) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) or Part 1 of this Chapter.

(g) [Reserved]

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with Subpart A of Part 1 of this Chapter.

§ 24.833 - 24.838 [Reserved]

§ 24.839 Transfer of Control or Assignment of License.

(a) Approval required. Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy or

legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the broadband Personal Communications Service is also subject to §§ 24.711(e), 24.712(d), 24.713(b) (unjust enrichment) and 1.2111(a) (reporting requirement).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership and the relationships of the owners, including family relationships.

(b) Forms required.

(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within thirty (30) days following the event giving rise to the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within thirty (30) days following the event giving rise to the transfer.

(3) Form 430. Whenever an application must be filed under paragraph (a)(1) or (2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original construction requirement of § 24.203.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F. No assignment or transfer of control of a license for frequency Block C or frequency Block F will be granted unless --

(1) the application for assignment or transfer of control is filed after five years from the date of the initial license grant;

(2) the application for assignment or transfer of control is filed after three years from the date of the initial license grant and the proposed assignee or transferee meets the eligibility criteria set forth in § 24.709;

(3) the application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 and the assignee meets the eligibility criteria set forth in § 24.709; or

(4) the application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action, or, in the event of death or disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph.

(e) If the assignment or transfer of control of a license is approved, the assignee or transferee is subject to the original construction requirement of § 24.203.

§§ 24.840 - 24.842 [Reserved]

§ 24.843 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 24.203, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See subsection (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) Extension of Time to Complete Construction. An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond its control.

(c) An application for modification of an authorization (under construction) does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

(d) [Reserved]

§ 24.844 Termination of authorization.

(a) Termination of authorization.

(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will be considered only if it is filed within thirty (30) days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30-day period, a reinstatement application must be filed on FCC Form 489. Service to subscribers need not be suspended while a late-filed renewal application is pending, but such service shall be without prejudice to Commission

action on the renewal application and any related sanctions. See also § 24.16 (Criteria for Comparative Renewal Proceedings).

(b) Termination of special temporary authorization. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

(c) [Reserved]

**STATEMENT OF
COMMISSIONER JAMES H. QUELLO**

**RE: BROADBAND PCS AUCTION PROCEDURES
PP DOCKET NO. 93-253**

Today the Commission puts in place the procedures that will govern perhaps our most eagerly-awaited new spectrum auctions: the auctions for broadband PCS frequencies.

This Report and Order embodies our best collective effort to meet our Congressionally-imposed objectives in a responsible and fair way consistent with the record before us. In this process we have been particularly sensitive to the need to provide increased opportunity to small businesses, minorities, women, and rural telephone companies commensurate with the varying degrees of difficulty each faces in attracting capital. In the building of broadband PCS systems there is not only room for, but *need* for, players large and small, with different outlooks, different strategies, and different strengths. Our action today attempts to make that room and to meet that need.

Is every piece and part of this Report and Order perfect? No - but then, nothing is. Might each of us have drawn somewhat different lines had each been the sole author? Of course. But, not unlike the benefits we envision flowing from the policy of entrepreneurial inclusion in licensing PCS, I believe this Report and Order is sounder for having drawn from my colleagues' distinctive strengths and outlooks. And if the decisions we make today require further refinement, I am completely open to the presentation of facts and arguments in favor of any such changes. In the meantime, I support this Report and Order as the penultimate administrative precursor to moving broadband PCS from the drawing board to the launch pad.

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: IMPLEMENTATION OF SECTION 309(j) of the Communications Act--
Competitive Bidding (PP Docket no. 93-253)

Today, we adopt the auction rules for broadband Personal Communications Services (PCS). The impact of this decision cannot be overstated. It is significant and historic. In this Order, we address several important statutory goals established by Section 309(j) of the 1993 Omnibus Budget Reconciliation Act [OBRA]. My decision-making process in this docket was governed by several policy goals: 1. Develop auction rules that will permit efficient aggregation schemes for spectrum or geographic PCS service blocks; 2. Ensure that our auction rules provide sufficient flexibility to enhance the probability of participation by minorities, women, rural telephone companies, and small businesses [Designated Entities] in the provision of PCS services; 3. Develop an auction framework that will allow various business plans to be executed, thus promoting viable opportunities to serve a variety of market demand, from wide-area mobile telephony to niche data, voice or video applications; 4. Ensure that the capital markets can clearly evaluate the incentives created for investment in businesses owned by minority, women and small business PCS applicants; and 5. Develop an auction framework that addresses universal service goals through a competitive, private investment framework.

The decision today balances the various goals of Section 309(j) and my policy goals for this auction docket.¹ It reflects an effort to address the strong views of various competing interests for broadband PCS services. The decision is narrowly tailored to address the challenges of disseminating PCS licenses among a wide variety of businesses in order to achieve a robust, competitive wireless marketplace. The Order reflects a philosophy that the PCS market should not be governed by a few

¹ PCS services throughout the U.S. could provide a competitive solution to several goals emphasized by current National Information Infrastructure initiatives [NII]. Specifically, a wide dissemination of PCS licenses among businesses, large and small, minority, women-owned and rural, could support the NII goals of: 1. universal service; 2. private investment in infrastructure; 3. new competition; and 4. open access. The auction rules today create the possibility that PCS could become a significant market solution to universal access and affordable pricing throughout the U.S. and its territories.

large entities; rather, the market should provide sufficient opportunities to "democratize" the ownership of our PCS infrastructure among a wide variety of businesses, large and small, new entrants and existing players, minorities or women and rural companies.

There has been significant interest in this proceeding expressed to us by existing industry players, the Administration, Congress, minorities, women, rural telephone companies, small businesses, and the financial community. The decision today reflects a thorough effort to balance the various positions reflected in the record by each of these interests. Based on the requirements of Section 309(j) and my policy goals, I am generally satisfied that we have achieved a narrowly tailored resolution to the competing interests for PCS licenses. To understand the tailoring accomplished within this framework, interested parties must review the entire "package" of policy tools utilized to support the goal of disseminating licenses among a wide variety of competing businesses.²

While shaping the policy framework to implement PCS auction rules the following factors were important for me in assessing the effectiveness of the this Order today: a. The historical capital formation barriers for minority and women-owned businesses; b. The under- representation of minority and women-owned firms in the telecommunications industry; c. The relative economic leverage of existing telecommunications providers in terms of cost of capital, investment in infrastructure, existing revenue, cashflow, earnings and market value, economies of scale, market penetration, vendor relationships, customer and billing relationships, and access to subsidized funding or market price formulas; d. Potential costs of PCS licenses in the auction; e. Potential buildout costs of PCS licenses; and f. Potential costs of competing against existing communications service providers who have a significant headstart. The decision today addresses these factors in a balanced manner.

Simultaneous, multiple round bidding will permit entities to aggregate licenses across markets or within markets. In addition, the entrepreneurial blocks, block C [30 Mhz BTA] and block F [10 Mhz BTA], support Section 309(j) license dissemination requirements by limiting the relative economic power of the competitors for PCS licenses within these auctions. Without eligibility restrictions on blocks C and F, the largest

² Upon release of this Order, I believe the Commission must actively provide briefings to the public regarding the basic requirements of these auction rules. I look forward to hearing from the public regarding the effectiveness of future auction seminars that highlight the requirements imposed by these PCS rules.

telecommunications providers collectively representing \$195.5 billion in revenues, \$61.9 billion in earnings, and \$86.7 billion in cumulative book value, could dominate all PCS license auctions. In addition, interexchange carriers pay approximately \$25 billion in cumulative local access charges on an annual basis. Cellular carriers represent another \$10-12 billion in cumulative revenues, and a similar figure for capital investment. Thus, the combined impact of such market leverage and the incentive to reduce billions of dollars in fixed costs would likely eliminate smaller companies and new entrants from successful bids for PCS licenses. I believe further market intervention is needed to address these factors. Utilizing bidding credits only, without other policy tools in a package, is not likely to support Section 309(j) goals for disseminating PCS licenses among small, minority and women-owned businesses, unless the bidding credits were in the extreme range of 60-70%. Thus, the entrepreneurial blocks are likely to create a wider dissemination of licenses among a greater variety of businesses and potential new entrants.

Our eligibility and attribution rules for entrepreneur block licenses also are likely to further the ownership dissemination of PCS licenses. Incentives for partnering between larger telecommunications providers and small companies, or between large companies and minorities or women, are enhanced by a variety of bidding credits, installment payments, or tax certificate incentives. Due to the capital-intensive nature of PCS, our definition of entrepreneur [\$125 million] and small business [\$40 million] are sufficiently flexible to encompass a vast majority of businesses, including Tier II and Tier III local exchange carriers, various cellular operators, paging companies, cable companies, Specialized Mobile Radio operators, rural telephone companies, broadcast companies, and various other service providers within the communications industry. In addition, new entrants, with ongoing businesses in other industries or those creating start-ups, are likely to have a better opportunity to attract capital, joint venture, or form consortia to participate in PCS. License ownership caps, spousal attribution rules, and corporate or individual net worth limits also are designed to enhance our goal of disseminating PCS licenses among various businesses. Our decision to permit partitioning of PCS licenses to promote service by rural telephone companies also supports the statutory goals of Section 309(j). In addition, we will issue a Further Notice concurrent with the release of this Order that proposes to extend partitioning of PCS licenses to minority and women-owned businesses as well; this additional licensing flexibility is likely to promote service to the public and enhance our efforts to achieve the statutory goals of Section 309(j).

I believe the combined effect of our prior June 9 PCS decision this auction decision is a pro-competitive PCS license structure. The Commission's prior decision in cellular, where the FCC set-aside one license per market for local exchange carriers, and provided one license per market for new entrants, did not result in the most efficient market structure for fully competitive wireless services. The cumulative effect of our PCS license and auction decisions is more likely to create incentives for a competitive, robust PCS marketplace. Under our auction framework, a variety of competing business interests will have a more reasonable opportunity to bid for PCS licenses and compete in the wireless marketplace. By tailoring our policy tools to support a broader dissemination of PCS licenses, the Commission creates a win-win-win scenario -- the consumer has more choice, our economy creates new business opportunities, and we proceed to support the goals of promoting universal service and access through competitive market solutions. I look forward to receiving the feedback of the financial community, industry and designated entities as we proceed to implement the package of policy tools to effectuate the rapid deployment of PCS services by a wide variety of players.

STATEMENT OF COMMISSIONER SUSAN NESS

RE: In the Matter of Implementation of Section 309(j) of the Communications Act--Competitive Bidding, PP Docket No. 93-253

With today's action, the Commission has charted a clear course towards the broadband PCS auctions. Our deliberations have produced a decision that is narrowly tailored to meet Congress' objectives for competitive bidding.

We have adopted auction rules that will provide meaningful opportunity in this exciting new sector of the telecommunications industry to those who have historically been absent from the table. We have also taken steps to ensure that licenses will be disseminated to a wide variety of applicants. No one is guaranteed a favorable outcome; however, we have made the process as fair as possible. Our auction methodology will promote a robust competition to put each license in the hands of the applicant who values it most. Let us also not lose sight of another result Congress intended: for the first time, the public will recognize substantial revenues from licensing a particularly valuable portion of the spectrum resource.

The record we have factored into our decision-making is substantial. This record includes the views of the many interested parties who have taken the time to meet with me. I am confident that we have achieved a balanced result. We have also incorporated safeguards into our rules to minimize shams.

On a related note, I am concerned lest the auction process attract not only serious players, but also those unscrupulously wishing to take advantage of consumers in the form of "get rich quick" schemes. I caution potential applicants to keep in mind that the cost of acquiring a PCS license is likely to be substantial, and the business risks are high. Broadband PCS is not a place to earn phenomenal returns on your retirement fund. I encourage the Commission staff to get the word out to consumers themselves, as well as the various consumer protection agencies. A concerted effort in this area before the auction begins could save consumers a lot of grief.

I fully support the Commission's efforts to make broadband PCS a reality. The rules and procedures we adopt today will hasten that result.

SEPARATE STATEMENT
OF
COMMISSIONER RACHELLE B. CHONG

*Re: Implementation of Section 309(j) of the Communications Act -- Competitive Bidding
PP Docket No. 93-253*

Just three weeks ago, the Commission finalized rules governing broadband personal communications services, or PCS. Today, consistent with congressional intent, we adopt rules establishing a system of competitive bidding to award PCS licenses. Taken together, these two decisions represent an important milestone in our efforts to bring the benefits of this innovative wireless technology to the American public.

Today's decision is the result of an enormous amount of work by the Commission's staff and all who provided comments in this proceeding. It reflects a balance of the various perspectives presented in this extensive rulemaking record and the goals of Section 309(j) of the Communications Act. There are, of course, differing views of how the competitive bidding rules should be drafted. It is critical, however, to establish the ground rules for PCS in order to facilitate the licensing and rapid deployment of this vital new service. Thus, while every aspect of today's decision may not fully comport with my regulatory philosophy, I support these rules in order to move PCS forward.

The establishment of the two "entrepreneurs'" blocks will increase diversity in the telecommunications industry. It will encourage small businesses, rural telephone companies, and companies owned by women and minorities to participate in the PCS industry, consistent with the goals of Congress. While I support the overall approach reflected in today's decision, two general concerns are worth noting. A fundamental premise of competitive bidding is that the bidder who values a particular license most will submit the highest bid. Presumably, a bidder will devise a bidding strategy based on business judgments and a careful assessment of the economics of providing service in specific markets. I am concerned that some aspects of today's decision may unduly interfere with those judgments. I would rather have market forces shape the bidding process to the greatest extent possible. Moreover, the competitive bidding plan we have crafted is more complicated than I would have preferred, although I fully recognize that we are dealing with novel and complex issues. Despite these reservations, in the final analysis, I believe it is essential that we move forward with a set of rules. This will unleash innovators to build these important new communications systems and provide vigorous competition to existing wireless telephone services.

We are charting new waters here. Today's decision reflects our best predictive judgments based on the administrative record. When it comes to issuing licenses by competitive bidding, practical experience is in short supply and the consequences of our decision are great. I am hopeful that our decision today will result in successful auctioning of these licenses.